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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/575,010	02/28/2007	David Larrabure Reyes	1043.001	7021
58152 7590 01/25/2010 DEFILLO & ASSOCIATES, INC. P.O. Box 14104 Clearwater, FL 33766				
EXAMINER				
PATEL, VINOD D				
ART UNIT		PAPER NUMBER		
3742				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/575,010

**Applicant(s)**

REYES, DAVID LARRABURE

**Examiner**

Vinod D. Patel

**Art Unit**

3742

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 16 October 2009.  
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 4-10 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 4-10 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.  
10) ☒ The drawing(s) filed on 16 October 2009 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO/GS/US)  
Paper No(s)/Mail Date \_\_\_\_\_

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_  
5) ☐ Notice of Informal Patent Application  
6) ☐ Other: \_\_\_\_\_

***Election/Restrictions***

1. Newly submitted claims 9-10 directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: claims 9-10 are directed to a method for keeping a food warm.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 9-10 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

***Arguments/Amendments***

2. Applicant's arguments/amendments have been fully considered but they are not persuasive as for the following reason:

3. The text of those sections of Title 35, U.S. Code not included in this section can be found in the previous office action.

***Specification***

4. The amendment filed 9/23/09 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material (shown in marked up specification) which is not supported by the original disclosure is as follows:

Page 1, "these objects", "and the holder just keeps them heated up",

"The present invention relates to a food heater device comprising,"

Page 2, "a thermal bag comprising a first wall and a second wall, wherein the first wall and the second wall are joined by their outer boundary and define a bag having an entry;

a middle wall joined to and placed between the first wall and second wall, wherein the middle wall defines a first compartment and a second compartment;

a reusable heater device to heat up and keep the food warm;

wherein the food is placed on the first compartment;

wherein the reusable heater device is placed on the second compartment;

wherein the food does not have direct contact with the reusable heater device; wherein the reusable heater device is non-electrical; and

wherein the reusable heater device comprises a sealed plastic bag filled with liquid and a trigger device immersed in the liquid.

Pressing the trigger creates a phase change reaction from liquid to solid on the liquid inside the heater. The reusable heater device returns to the liquid phase by placing the plastic bag in boiling water.

Furthermore, the present invention relates to a method for heating and keeping a food warm by using the device according to the present invention.

The device according to the present invention"

Page 3, "FIG. 1. Shows a top view of the heater according to the present invention .

FIG. 2. Shows a front view of the thermal bag according to the present invention showing the first compartment and the second compartment.

FIG. 3. Shows a cross-sectional view of the device according to the present invention showing the heater inside it.

FIG. 4 Shows a perspective view of the device of the present invention showing the device in use with the heater and the tortillas.

FIG. 5 Shows a perspective side view of the thermal bag of the present invention showing the different walls of the bag.

"reusable heater device", "combination heater device", "comprises",  
"heater device"

Page 4, "heater device", "filled", "the trigger is activated", "heating device", "bent",  
starts", "then", "it only needs"

Applicant is required to cancel the new matter in the reply to this Office Action.

***Claim Rejections - 35 USC § 101***

5. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

6. Claims 4-10 are rejected under 35 U.S.C. 101 because the claimed invention is not supported by either a specific and substantial asserted utility or a well established utility.

Specification and drawing does not support claimed invention. Based on  
discloses information it is not operable.

***Claim Rejections - 35 USC § 112***

7. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

8. Claims 4-10 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed. New claims 4-10 are not supported by original disclosure and discloses new matter situation. Applicant added the new claims and limitations in the revised specification and drawings. Original claims, specification and drawings are completely different.

Claims 4-10 are also rejected under 35 U.S.C. 112, first paragraph. Specifically, since the claimed invention is not supported by either a specific and substantial asserted utility or a well established utility for the reasons set forth above, one skilled in the art clearly would not how to use the claimed invention.

***Claim Rejections - 35 USC § 102***

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. Claims 4-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Hyatt (US5999699).

Hyatt discloses a food heater (Fig. 1-8) comprising all the claimed limitations including a reusable device to heat up and/or keep food warm, consists of: a) a HEATER (10) device, which may be used more than once; b) a containing THERMAL BAG (12), which includes a first wall and a second wall joined by their outer boundaries, so that they define a bag with one entry; a middle wall joined to and placed between the first and second wall, so that a first compartment where the food to be heated will be placed and a second compartment where the removable HEATER (18) device will be placed.

The first and second walls are made of an isolating fiber.

The HEATER (10) device consists of a sealed plastic bag, full of liquid and a TRIGGER immersed in liquid, which operates to make the device start heating, after such TRIGGER has been actuated by a user as shown in Figures 1-4.

#### **REMARKS**

11. Applicant's arguments have been fully considered but they are not persuasive. Examiner respectfully disagrees with the applicant with respect to the statement, "No new matter has been added to the drawings, specifications, or claims by the present amendment." As disclosed above applicant added new matter in the drawings, specifications and claims including numerous limitations as described above. Examiner further disagrees with the applicant with respect to the statement, "Basically, the examiner indicated that Ross teaches all the limitations of claims 4-10." First there is no Ross reference, second claims 4-10 were not in the claims before and hence claims

4-10 were not rejected before. Claims 1-3 were rejected before, claims 1-3 are cancelled by the applicant, and hence there is no argument.

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vinod D. Patel whose telephone number is (571)272-4785. The examiner can normally be reached on 7.15 A.M. TO 3.45 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tu B. Hoang can be reached on 571-272-4780. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Vinod D. Patel/

Examiner, Art Unit 3742

/TU B HOANG/

Supervisory Patent Examiner, Art Unit 3742